



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

November 6, 2002

MISSOURI CLEAN WATER COMMISSION MEETING
November 6, 2002
Sheraton Hawthorn Park Hotel, Springfield, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Joe Bindbeutel, Assistant Attorney General, Jefferson City, Missouri
Jerry Bindel, Associated Electric Cooperative, Springfield, Missouri
Curtis Braden, Water Services, Kansas City, Missouri
Loring Bullard, Watershed Committee of the Ozarks, Springfield, Missouri
John Carter, The Doe Run Company, Viburnum, Missouri
David Casaletto, Table Rock Lake Water Quality, Kimberling City, Missouri
Cindy Davies, Department of Natural Resources, Springfield, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Bruce Farris, Farris Hospitality, Inc., St. Robert, Missouri
John M. Farris, Farris Hospitality, Inc., St. Robert, Missouri
Floyd Gilzow, Upper White River Basin Foundation, Walnut Shade, Missouri
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri
John Hoagland, Missouri Rural Water Association, Ashland, Missouri
Drew Holt, UOE, Springfield, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Duane Kelly, Independence, Missouri
Keith Klein, McKinney & Stringer, Oklahoma City, Oklahoma
Bruce Litzsinger, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Jim Lunan, Holcim, Bloomsdale, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Tina Montez, Empire District Electric Company, Joplin, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Kristi Perrin, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Pozzo, Ameren UE, St. Louis, Missouri
John D. Reece, Little Blue Valley Sewer District, Independence, Missouri
Valerie Robinson, Department of Natural Resources, Springfield, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Joe Seider, Springfield, Missouri

Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Diana Sheridan, James River Basin Partnership, Springfield, Missouri
Terry Shultz, Paul Shultz Land Development, Waynesville, Missouri
Terry Spence, Unionville, Missouri
Mike Stites, Honeywell, Kansas City, Missouri
John Oke-Thomas, Farris Hospitality, Inc., Springfield, Missouri
Melody Torrey, Stream Team 714, Unionville, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Chris Vitello, Department of Conservation, Springfield, Missouri
Todd Wagner, City of Springfield, Springfield, Missouri
Bob Williamson, Water Services, Kansas City, Missouri

Chairman Herrmann called the meeting to order and introduced Vice-Chairman Minton, Commissioners Kelly, Perry, Greene, and Hegi; Director of Staff Jim Hull; and Assistant Attorney General Deborah Neff.

Administrative Matters

Informational Presentation – Outreach and Assistance Center

Kristi Perrin explained the new Community Assistance Office has been established to serve as the liaison for the Department of Natural Resources to anyone that would have any connection with natural resource issues and who would be in need of information about financial assistance opportunities. She continued that there are various services and financial opportunities within the department that many don't know about. Ms. Perrin explained that the Outreach and Assistance Center was created by putting together several programs within the department to provide education and outreach, technical assistance, and general assistance to the public. She noted that the legislature cited there was not enough service and public outreach being done and people did not know of the services provided by the department other than those in the regulatory area. Ms. Perrin stated she will need to communicate well with the financial staff within the department to link people to the right technical resources. She noted her office is planning to hire an outside consultant to perform a satisfaction survey of any recipient of any financial grant or loan from within the department to find out how the department is doing and to find out what we can do to provide better services.

Commissioner Perry asked if it would be possible to make people aware of this new office through other state agencies that also have outreach functions.

Ms. Perrin responded she will be linking up with all those agencies.

Commissioner Perry suggested having the name and address of the Community Assistance Office on extension documents since they deal with rural communities.

Ms. Perrin stated those are the groups she wants to reach and asked for suggestions of others.

Commissioner Perry asked if Ms. Perrin is connected to a web site.

Ms. Perrin responded there is a web site being developed and it will link to all the financial programs within the department so there is one location to find all the financial opportunities available within the department. There will also be links to the other agencies.

Ms. Perrin informed the commission those that have been incorporated into the Outreach and Assistance Center include Historic Preservation, Public Information Office, Technical Assistance Program, and the Kansas City and St. Louis Urban Outreach Offices.

Adoption of September 5, 2002 Commission Meeting Minutes

Commissioner Kelly moved to **approve the September 5, 2002 Clean Water Commission meeting minutes as submitted by staff**; seconded by Commissioner Minton and approved with Commissioner Greene abstaining.

Adoption of September 23, 2002 Conference Call Minutes

Commissioner Perry asked that the sentence stating "Commissioner Perry noted that it should go back to what the commission saw that they eliminated" be changed to "said that they eliminated."

Commissioner Hegi moved to **approve the September 23, 2003 conference call minutes including the change requested by Commissioner Perry**; seconded by Commissioner Greene and unanimously passed.

Enforcement Referrals

Patten Hog Operation

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported the Patten Hog Operation is a Class II swine operation located in Morgan County. Three confinement buildings are divided into farrowing and breeding/gestation units. Two animal waste spills, one in June 2001 and the other in November 2001, occurred from the Patten Hog Operation. The June spill was caused because the anaerobic lagoon overflowed through the emergency spillway. The wastes entered an unnamed tributary of the Little Richland Creek and precipitated a fish kill. The November spill was caused when a pipe used to transport animal wastes to the anaerobic lagoon plugged. This resulted in the wastes entering an unnamed tributary of Little Richland Creek. Approximately 150 yards of the unnamed tributary were adversely affected. Violations of the Missouri Clean Water Law include discharging without a permit and polluting and violating Water Quality Standards General Criteria.

Mr. Mohammadi stated the department has attempted to resolve the noncompliance issues with Mr. Patten but it appears voluntary compliance with the Missouri Clean Water Law will not be achieved. He recommended this matter be referred to the Attorney General's Office for appropriate action.

No one was present from the Patten Hog Operation.

Commissioner Minton asked about the extent of the damage.

Mr. Mohammadi reported investigative costs were \$2,301 and the value of the fish was \$3.25.

Commissioner Perry asked if the Patten's were notified that this was being brought to the commission today.

Mr. Mohammadi replied they were notified by certified mail.

Commissioner Perry asked if there were two certified letters sent after the meeting that was held in March.

Mr. Mohammadi replied there were three letters sent after the March meeting.

Commissioner Perry asked if the March meeting was by telephone.

Mr. Mohammadi noted he believed it was a face-to-face meeting.

Commissioner Perry asked if the argument is over the amount of the fine or over the amount of damages.

Mr. Mohammadi replied it is the penalty, damages and bringing the facility into compliance. This is a Class II facility that does not have to have a permit. Once there is a spill and a discharge, the facility is required to obtain a permit so they can control the operation.

Commissioner Minton asked how staff becomes aware of these occurrences.

Mr. Mohammadi replied generally through complaints from the public and calls to the Department of Conservation who then notifies the department. He noted this incident was reported through a call to the Environmental Emergency Response.

Commissioner Perry asked if staff knew who made the call.

Mr. Mohammadi noted he did not.

Commissioner Perry asked if this is a matter of refusal or a breakdown of the negotiations.

Mr. Mohammadi replied it is a matter of refusal.

Commissioner Kelly asked if they have indicated a willingness to obtain a permit.

Mr. Mohammadi replied staff has received no communication from Mr. Patten.

Commissioner Perry asked on what basis a Class II operation is required to get a Class IA permit.

Mr. Mohammadi replied they are not required to get a Class IA permit, which is a site-specific permit. They will be required to obtain a general permit.

Commissioner Perry asked if there is a statute that requires obtaining a general permit if a spill occurs.

Mr. Mohammadi reported under the Missouri Clean Water Law and commission regulation, if there is danger to the environment, the department can require an entity to obtain a permit.

Commissioner Perry asked if this is required for every spill.

Mr. Mohammadi replied it is required consistently.

Commissioner Perry noted they are required to have a general permit, which is not site-specific, which means they have to have a permit, which agrees that they won't have any further spills.

Mr. Mohammadi replied the general permit outlines how they are supposed to operate a facility. Staff ensures there is enough land to apply the waste, enough storage, and appropriate equipment to land apply.

Commissioner Hegi asked if the settlement amount is confidential.

Deborah Neff, Assistant Attorney General, replied it is confidential. Details of the settlement discussion would have to be discussed during closed session.

Commissioner Perry noted referral to the Attorney General's Office will not negate the possibility of future negotiations.

Joe Bindbeutel, Assistant Attorney General, stated the first step will be to review the file and open negotiations to try to resolve without litigation.

Mr. Mohammadi stated staff has exhausted all administrative remedies available to them so the case has to be moved to the next step, which is seeking legal assistance from the Attorney General's Office.

Commissioner Minton moved to **refer the Patten Hog Operation to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Greene and unanimously passed.

Paul Shultz Land Development

Mr. Mohammadi reported Paul Shultz is the owner of a commercial land disturbance site in Pulaski County authorized by a Missouri State Operating Permit. The permit was issued on December 15, 2000 and expired on January 2, 2002. The receiving stream for this site is an unnamed tributary to Sawmill Hollow, which is classified as a losing stream.

On January 9, 2002, department staff inspected the Shultz site and observed violations of the Missouri Clean Water Law. The violations included failure to implement best management practices and failure to apply for renewal of the Missouri State Operating Permit. On January 23, 2002, the department issued a notice of violation to Mr. Shultz. The notice of violation requested that Mr. Shultz install best management practices, submit a written response describing the type, size, and location of erosion control measures to be implemented, and submit an application for renewal of the Missouri State Operating Permit by February 15, 2002.

On February 19, 2002, the department received correspondence from Mr. Shultz describing the best management practices he planned to implement and a copy of the check that had been submitted to the department with his application for renewal of the Missouri State Operating Permit. In this letter Mr. Shultz requested a sixty-day extension from the February 15 deadline to achieve compliance. The department considered his request for an extension and granted Mr. Shultz an extension of thirty days.

On March 21, 2002, department staff revisited the site to verify compliance. Staff observed that straw bales had been installed incorrectly and a significant amount of sediment had been deposited in the unnamed tributary to Sawmill Hollow.

On April 2, 2002, the department issued a notice of violation to Mr. Shultz for failure to implement best management practices and discharging a water contaminant into waters of the state.

On July 8, 2002, Mr. Shultz received a letter from the department offering to resolve the violations through an out-of-court settlement. This offer requested that Mr. Shultz respond within fifteen days of receipt.

On July 17, 2002, department staff visited the site again and observed that conditions at the site had not changed since the March 21, 2002 inspection. Vegetation had not been established, the straw bales had not been maintained, and sediment deposits were observed in the unnamed tributary to Sawmill Hollow.

On July 26, 2002, the department sent Mr. Shultz a second letter offering to settle the violations through an out-of-court settlement. Mr. Shultz responded on August 7, 2002 and spoke by telephone to department staff. During this conversation, department staff discussed the violations and the process to settle the violations. Mr. Shultz was informed of the department's proposed penalty to which Mr. Shultz stated that he had filed for bankruptcy and that his representative would be contacting the department.

Mr. Mohammadi reported staff has reached tentative agreement with the responsible party and recommended the matter be referred to the Attorney General's Office contingent upon no final agreement being reached by the end of November.

Terry Shultz, Paul Shultz Land Development, noted he and Mr. Mohammadi spoke this morning and he believes they have reached a resolution. He noted the site has been inspected and the only matter remaining is the fine.

Commissioner Minton moved to **refer Paul Shultz Land Development in Pulaski County to the Attorney General's Office contingent upon no agreement being reached by the end of November**; seconded by Commissioner Kelly and unanimously passed.

Farris Hospitality Group – Motel 6 Project

Mr. Mohammadi reported Victor Farris owns two land disturbance sites in Pulaski County, Motel 6 and Hidden Valley Estates. The receiving stream for the properties is an unnamed tributary to Dry Creek, which is classified as a losing stream.

On December 21, 2001, the department corresponded with Mr. Farris regarding a complaint that land clearing activities were occurring at the southeast intersection of Highway Z and Highway Y in St. Robert, Missouri. This is the original site for the Motel 6 Project located on the southeast corner of the intersection of Vicky Lane and Highway Z. The correspondence explained to Mr. Farris that land clearing activities of five acres or more require a permit from the department and that an erosion control plan must be developed and implemented.

On January 9, 2002, department staff conducted an inspection of land disturbance activities at Hidden Valley Estates Plat No. 2 and discovered evidence of land disturbance activities at what is now the Motel 6 Project. Department staff observed that the sites did not have adequate best management practices to prevent pollution of waters of the state. At the time of this inspection, the permit for land disturbance at the Hidden Valley Estates site had expired and the Motel 6 Project was unpermitted.

On January 28, 2002, the department issued a notice of violation to Mr. Farris for failure to apply for renewal of the Missouri State Operating Permit and failure to implement and maintain best management practices at the Hidden Valley Estates site. Mr. Farris was also issued a notice of violation for failure to obtain a Missouri State Operating Permit for land disturbance of five acres or more at the Motel 6 Project. The letter accompanying the notice of violation required Mr. Farris to install best management practices at both sites, submit a

written response detailing type, size, and location of best management practices, and submit an application for a land disturbance permit to include both sites by February 15, 2002. On February 19, 2002, the department received a letter and an application for land disturbance that included the Hidden Valley Estates and the Motel 6 Project. The letter requested a 60-day extension to implement best management practices and submit a Storm Water Pollution Prevention Plan.

On March 8, 2002, department staff telephoned Mr. Farris to inform him that a 60-day extension was not acceptable and that, at a minimum, temporary best management practices should be in place within one week. On March 21, 2002, department staff conducted an inspection of the site and observed that a line of sediment fence had been installed on the east side of the project; however, the fence was not towed in. An erosion control blanket had not been installed on a small portion of the project. Department staff estimated that 95% of the project had no best management practices in place and observed significant erosion occurring. Photographs document the violations observed during this inspection.

On April 2, 2002, a notice of violation was issued to Mr. Farris for failure to implement adequate best management practices and for discharging a water contaminant into waters of the state. The notice of violation urged Mr. Farris to immediately update and implement the Storm Water Pollution Prevention Plan and immediately comply with the conditions of the Missouri State Operating Permit. Mr. Farris was also informed that the matter had been referred to the Water Pollution Control Program, Enforcement Section.

On July 18, 2002, department staff met with Victor Farris and John Farris to discuss a resolution to the violations. During this meeting, the process for resolving the violations was discussed, which included a civil penalty. John Farris stated that a penalty was not appropriate and that they would exhaust every administrative appeal available. Department staff recommended Mr. Farris write a letter explaining why a penalty is not appropriate and make a case for such. The department received this letter and considered the arguments against a civil penalty and the statement that they will not tolerate any fines relating to these events. Mr. Farris has made it clear that he is unwilling to negotiate civil penalties to resolve the ongoing violations of the Missouri Clean Water Law occurring at the properties owned by Victor Farris. Mr. Mohammadi recommended referral of this matter to the Attorney General's Office.

John Oke-Thomas, architect for the project, stated the land was moved in 1983 and 1984 and it was their understanding that the Clean Water Act was enacted in 1992. He continued his client did develop a plan to vegetate the land after hearing from staff but the vegetation did not thrive. Mr. Oke-Thomas stated he corresponded with the department to inform them they were doing the best they could but needed more time. He continued that his client refused to pay the fine because he has already invested around \$26,000 in trying to vegetate the land. His client was then informed that a water detention plan had to be developed and the city has not yet issued the building permit to install the water detention system. Mr. Oke-Thomas noted he spoke to the department's inspector several days ago who noted she saw a lot of

improvement but no water detention system. He noted they have done all the vegetative work that needed to be done at this point.

Chairman Herrmann noted the federal Clean Water Act was enacted in 1972 and asked when the Missouri Clean Water Law went into effect.

Ms. Neff responded it was around 1979.

Mr. Oke-Thomas stated they thought it was 1992 and there was no time that anyone told them that the Clean Water Act was enacted in the 70s.

Chairman Herrmann noted his appointment to the Clean Water Commission was initially in 1988 at which time the Clean Water Act had been in effect for some time.

Mr. Oke-Thomas noted he would not argue that but that was what they thought when this situation came about.

Ms. Neff stated the Missouri Department of Natural Resources was created in 1979 and clean water statutes were in effect prior to that. In 1979, the commission, which was already in existence, was transferred to the Department of Natural Resources.

Mr. Oke-Thomas noted this was his client's position at the time that he made this argument to the Department of Natural Resources. He has since decided to go forward with the requirements of the department. The department felt the requirements were not being completed as expeditiously as they wanted. The site was seeded again this fall and it has now germinated.

Commissioner Perry asked about the status of the permit application with the City of St. Robert.

Mr. Oke-Thomas replied the city will send the application to a contracted engineer since they don't have one on staff.

Commissioner Perry asked when the application was made to the city.

Mr. Oke-Thomas replied the application was filed with the city about three weeks ago.

Commissioner Perry asked if this was about the time his client received notice that this action was being taken.

Mr. Oke-Thomas replied he wrote the department in March that the water detention plan was being prepared for this site. The engineer over-sized the water detention so the city rejected it and another engineer had to do another water detention calculation. A bid of \$70,000 has been received for the detention system. Mr. Oke-Thomas said there was never a time when they disturbed anything close to five acres.

Chairman Herrmann noted the point of argument is not the requirement for storm water detention but the difficulty with erosion control.

Mr. Mohammadi reported Mr. Farris applied and was issued a land disturbance permit in May 2000. Regional Office staff worked with Mr. Farris to get the site into compliance. When these efforts were exhausted, the case was referred to enforcement staff in April 2002. The purpose of the storm water land disturbance permit is preventative.

Mr. Oke-Thomas noted they did plan ahead but there were problems with the water detention system.

Chairman Herrmann noted storm water detention is for protection of the watercourse down below, not for the control of erosion.

Mr. Oke-Thomas replied the vegetation has been completed on the site. The area where the water detention is to go was left alone. He noted the staff person that took pictures several weeks ago said progress was being made on the project.

Commissioner Perry asked how long it will take to construct the water detention system.

Mr. Oke-Thomas noted he hoped not more than two months unless the site is frozen which will make it difficult to excavate the site.

Commissioner Perry asked if the building part of the project is completed.

Mr. Oke-Thomas said construction is ongoing for Motel 6.

Commissioner Minton asked if there is disagreement over the fine and the department's position that there isn't a water detention system in place.

Mr. Mohammadi replied staff made the last site visit on October 30 and there has been quite a lot of improvement. Seeding and mulching has occurred and no additional BMPs were observed on the lower tier of the property.

Commissioner Minton asked if refusal to pay any civil penalty will remain the position.

Mr. Farris replied they have spent over \$26,000 not including the \$70,000 that will be spent on the retention system. Some of the land that was not mulched is where the retention basin will go. Mr. Farris noted they felt they had never moved more than five acres of land but they used every reasonable effort they could to comply with the staff requirements. He continued that water from other properties comes onto this site. Mr. Farris asked that the matter stay with the department so they can work to complete the items staff believes need to be accomplished.

Chairman Herrmann asked if the Attorney General's Office would work to resolve the matter after referral.

Ms. Neff noted that would be the first action by the Attorney General's Office.

Chairman Herrmann noted referral to the Attorney General's Office would give Mr. Farris an opportunity to present his arguments.

Mr. Farris replied they would like to end this and if the department feels there is more work to be done it will be addressed.

Commissioner Minton noted it appears they have worked to resolve the issues even if they have made mistakes. He asked if staff believes they cannot come to a resolution of issues by the next commission meeting without referral.

Mr. Mohammadi replied they are adamant that they will not accept responsibility for violating the law for a long period of time and causing pollution of waters of the state. As long as this issue is not resolved, there is no hope to resolve the issues.

Commissioner Minton asked Mr. Farris if he would consider any sort of civil penalty to resolve the issue.

Mr. Farris responded he is not sure what amount would be proposed but they would rather not pay a penalty. He continued that they are told now they have to fix things that were done years ago. They attempted to do this but were then told they had not used best management practices which they attempted to do but were then told they were not doing that right.

Commissioner Minton noted these are reactive rather than proactive steps and the damage had already occurred. He continued there has to be some resolution to damages that occurred to waters of the state. Commissioner Minton again asked if there is any way they would consider a civil penalty to resolve this matter.

Mr. Oke-Thomas stated they made every attempt to work with staff and they are still willing to do that.

Commissioner Minton noted they are willing to work with the staff on the technical aspects of the site but asked about the civil penalty issue.

Mr. Oke-Thomas replied yes but staff has taken a position and they will not budge from the penalty that was established. They are saying they have to consider what has already been done.

Commissioner Greene stated this issue is obviously at a standstill and she encouraged them to obtain technical advice so they don't have to keep redoing the project.

Mr. Mohammadi noted the letter sent to Mr. Farris refers to negotiated civil penalty. There is no negotiation when there is no counteroffer from the responsible party or when they refuse adamantly to pay.

Mr. Oke-Thomas noted he has never spoken with Mr. Mohammadi but this was the position Paul Dickerson took.

Mr. Mohammadi stated this is the program policy and negotiated civil penalty was written in the letter and staff is willing to negotiate.

Mr. Oke-Thomas said if that is the case, they are willing to negotiate.

Mr. Farris stated they would be willing to sit down with staff to try to resolve.

Chairman Herrmann noted, as a consulting engineer, he did about 40 projects at Fort Leonard Wood and can appreciate how erodible the soil is and how difficult it is to get vegetation to take hold. He continued that it appears that competent professional advice was lacking as storm water detention will not stop erosion but will intensify the problem by silting up the detention pond if it's not properly controlled upstream. Chairman Herrmann suggested turning the matter over to the Attorney General's Office so both parties can present their arguments to resolve the matter.

Commissioner Greene moved to refer the matter to the Office of the Attorney General for appropriate legal action and encouraged parties to continue working to resolve the issue.

Mr. Farris stated he believes there would be a better result if they could meet with department staff.

Commissioner Perry noted this action would not prevent that from occurring.

Mr. Mohammadi stated one option would be to refer contingent upon no final agreement being reached prior to November 30.

Commissioner Greene amended her motion to **refer Farris Hospitality Group Motel 6 Project to the Office of the Attorney General contingent upon a final agreement not being reached by November 30**; seconded by Commissioner Kelly and unanimously passed.

Commissioner Perry noted both of the last two referrals regarded highly erodible conditions in Pulaski County. She asked if there isn't something proactive the department can do to inform the public of where they can get good quality technical assistance before they begin construction.

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, responded it is addressed through the permit but the proactive approach is addressed to a certain degree within some of the projects funded with 319 money in the Technical Assistance Program. This staff provides training around the state on best management practices. There is also a 319 project in Pulaski County that funds best management practices on individual residential building sites.

Commissioner Perry stated this was a big motel and apartment project. She asked how they can do these projects and not know the proper procedures.

Ms. Shannon responded the Technical Assistance Program does have the ability to provide help on this particular matter.

Commissioner Perry asked why there is no communication between obviously qualified architects that apparently don't know about land disturbance.

Ms. Shannon noted staff can check on whether any of these workshops have been done in Pulaski County.

Chairman Herrmann noted he does not believe it's a matter of workshops but rather a matter of hiring competent professionals. He continued it's a matter of doing the job properly and controlling the erosion on the site.

Mr. Hull noted the Clean Water Law has been in effect for some time and people in the business of construction and development bear some responsibility of being able to understand the current requirements of the law and regulations. Sometimes education is obtained through enforcement.

Chairman Herrmann noted if a land disturbance permit is obtained, an erosion control plan is required.

Mr. Mohammadi responded the permit outlines in detail what is supposed to be done.

Commonwealth Development Company

Mr. Mohammadi reported Commonwealth Development Company is the owner of a 70-acre residential land disturbance site in Lincoln County that is authorized by a Missouri State Operating Permit to disturb 35 acres of land. The Missouri State Operating Permit was issued on August 2, 2001 and expired on January 2, 2002. The receiving stream for this site is an unnamed tributary of the Cuivre River.

On February 19, 2002, department staff inspected the Countryside Estates development and found that a storm water basin on the southeast corner was not designed for sediment control, there was no evidence of mulch or grass cover on the steep slopes, there was very little temporary ground cover, the storm sewer and yard inlets were not protected, and an

application for renewal of the Missouri State Operating Permit had not been received prior to the expiration date. A Notice of Violation was issued February 21, 2002 for failure to implement and maintain Best Management Practices (BMPs) and renew the Missouri State Operating Permit. The NOV required a written response addressing the violations and submission of a copy of the Storm Water Pollution Prevention Plan (SWPPP) for the site. Commonwealth Development responded with a letter on March 13, 2002 stating that the required BMPs had been installed, and seeding would be complete in thirty days. Commonwealth Development also stated that an application for renewal of the permit had been submitted to the department in December 2001.

On April 8, 2002, department staff inspected the Countryside Estates Development and observed no evidence of mulch or grass cover on the steep slopes, a storm water basin appeared undersized, mud and dirt had not been removed from the streets, straw bales on the south end of the street were not adequate, and very little temporary ground cover had been established. The inspection report noted the SWPPP had not been submitted nor had the department received an application for renewal of the Missouri State Operating Permit.

Department staff collected a sample of the discharge as it left the property and sample analysis indicated settleable solids of 3.5 ml/L/hr and non-filterable residue of 2280 mg/l exceeding the permitted limits of 2.5 ml/L/hr for settleable solids and 45 mg/l for non-filterable residue. On May 3, 2002, a Notice of Violation was issued to Commonwealth Development Company for failure to renew the Missouri State Operating Permit, develop a SWPPP, implement and/or maintain best management practices, and for exceeding effluent limits contained in the expired Missouri State Operating Permit.

On July 1, 2002, the department sent a letter offering to settle violations of the Missouri Clean Water Law occurring at the Countryside Estates Development. In response to the letter, department staff met with Mr. Gigliotti on July 19, 2002 to discuss the process for bringing the development into compliance. During this meeting department staff recommended Mr. Gigliotti write a letter discussing the specific violations and make a reasonable counteroffer to the penalty. Since no response was received, department staff contacted Mr. Gigliotti on August 15, 2002 via telephone to check on the status of the counteroffer. On September 10, 2002, department staff sent Mr. Gigliotti a second offer to settle letter informing him that if a counteroffer was not received within seven days the case would be recommended for referral to the Attorney General's Office. To date, the department has not received a response. Mr. Mohammadi recommended referral to the Attorney General's Office for appropriate legal action.

No one was present representing Commonwealth Development Company.

Commissioner Greene moved **to refer the Commonwealth Development Company to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Minton and unanimously passed.

Williamsburg

Mr. Mohammadi reported on Williamsburg, a new 30-acre subdivision located in Imperial, Jefferson County, Missouri, developed by Essex Contracting, Inc. The receiving stream is a tributary of Glaize Creek, which is unclassified.

The St. Louis Regional Office issued three Notices of Violation to Essex for: failure to install adequate storm water control measures; discharging water contaminants into waters of the state, which reduced the quality below the Water Quality Standards; causing pollution of waters of the state; and exceeding permit effluent limits for Total Suspended Solids.

The St. Louis Regional Office inspected the Williamsburg site during rain events on December 9, 1999, January 29, 2001 and May 31, 2001, and observed turbid storm water leaving the site each time. In addition, silt had built up below the outfall of the sedimentation basin. Inspections are conducted during rainfall events to determine the effectiveness of the Best Management Practices (BMPs) for storm water control. Photographs taken by the department's inspector show the violations of turbid silt laden storm water leaving the site and the lack of BMPs, which are required by the permit. Essex had failed to install adequate storm water control measures. Analyses of water samples taken at the site exceeded permitted limits for Total Suspended Solids.

Mr. Mohammadi stated staff has reached a tentative agreement with the responsible party and recommended the matter be referred to the Attorney General's Office contingent upon not reaching final agreement by November 30.

No one was present representing Williamsburg.

Commissioner Perry moved to **refer the Williamsburg matter to the Office of the Attorney General contingent upon no settlement being reached by November 30;** seconded by Commissioner Greene and unanimously passed.

Commissioner Perry noted the violations occurred almost two years ago and asked why it has taken so long to request the referral.

Mr. Mohammadi replied negotiating the civil penalty has taken some time. The site has been brought into compliance and sold to a new developer.

Commissioner Perry asked how soon after May 31, 2001, it was brought into compliance.

Mr. Mohammadi noted he would have to review the file to answer that question.

Commissioner Perry stated she is just reiterating her concern that it should not take two years to enforce an action.

Mr. Mohammadi noted he understands her concern but staff has to go through conference, conciliation and persuasion. He recognizes that land disturbance sites are time sensitive and he tries to move the cases as fast as possible.

Commissioner Perry noted land disturbance is a very significant problem throughout the state and causes tremendous problems to the environment. She asked how soon staff visits sites after land disturbance permits are issued to make sure it is in compliance.

Mr. Mohammadi replied there is not sufficient staff to inspect every land disturbance site. Staff responds to complaints or just randomly inspects sites.

Ameren UE Bagnell Dam

Bill Bryan, Deputy Chief Counsel of the AGO Environmental Protection Division, introduced Joe Bindbeutel, Chief Counsel. Mr. Bryan reported the 30th anniversary of the Federal Clean Water Act was recently celebrated and the Missouri Clean Water Law was passed in 1973. Mr. Bryan stated his predecessors and those of the Clean Water Commission have worked very closely and enjoyed great success in protecting Missouri's rivers and streams. He continued he is present today in the spirit of partnership to ask for referral of a matter to the Office of the Attorney General because the circumstances demand swift legal action. Mr. Bryan stated it is the Clean Water Commission's responsibility to effectuate the purposes of the Clean Water Law and it is the responsibility of the Office of the Attorney General to do everything that is necessary to protect the state's legal interests.

Mr. Bryan explained the problem relates to the operation of Bagnell Dam and the power plant below Lake of the Ozarks. Some 43,000 fish died this spring at the dam due to being drawn into the water intakes, over the spillway or due to unusual turbulence below the dam. While the kill was still ongoing, the situation was discussed with the commission's staff, with the Department of Conservation staff and a meeting was held with Ameren. Ameren explained from their perspective what the problem was and how they were trying to address it. Mr. Bryan continued that Ameren has since filed in Federal court a lawsuit against the Department of Conservation and the individual commissioners seeking a declaratory judgment that the Department of Conservation had no authority to regulate fish and wildlife below the dam to recover for the damages to the fish that were killed. The Department of Conservation then responded with a lawsuit in Miller County. Mr. Bryan provided a copy of the lawsuits and a press release from the Department of Conservation's perspective.

Mr. Bryan explained the issue has to do with when does the federal constitution and laws passed by congress trump the states' authority to regulate matters within its borders. A state gets to regulate what happens within its borders and this is challenged in this lawsuit filed by Ameren. As a result, they will be brought to bear in the court in Miller County in the Department of Conservation's lawsuit as well. Mr. Bryan stated these lawsuits do not present the claims that the Clean Water Commission and the State of Missouri have under the Clean Water Law and under the common law generally for damage to the fish which are owned by the State of Missouri. Mr. Bryan reported this all takes place in the context of a relicensing

by the Federal Energy Regulatory Commission (FERC) of Bagnell Dam of which staff has worked very closely with the Department of Conservation staff and with Ameren officials. The projects are only relicensed every 30 years and the deadline will be in February 2004. Some of the key issues have to do with the effects on the environment. Mr. Bryan continued that because of the two lawsuits that have been filed, whether or not the state has authority over these resources within its boundaries is now before a federal district judge in Jefferson City and in front of a state court judge in Miller County. If either court finds that the supremacy clause in the US Constitution and the Federal Power Act preempts the state's regulation of fish and wildlife and water quality, then the relicensing effort is over. Ameren and the FERC will proceed without any requirement that they listen to the state because there is a court order that says federal law trumps state law in this instance. Mr. Bryan stated they believe it is in the state's legal interests to take swift action under the Clean Water Law and with other common law authorities to protect the state's interests. Mr. Bryan recommended immediate referral of the matter to the Office of the Attorney General requesting them to take all necessary action to protect the state's interest and further effectuate the purposes of the Missouri Clean Water Law.

Commissioner Greene asked if the commission is looking at the issue of federal/state and not the fish kill.

Mr. Bryan responded the broader context is the federal/state preemption issue. If a lawsuit is filed, it will seek to recover the damages for the loss of the fish. All remedies will be pursued to protect the state's interests.

Commissioner Perry asked if this would be an intervention into the existing lawsuit.

Mr. Bryan responded that is a strategy issue that should be discussed in closed session.

The commission agreed to take action on this item after holding a closed session.

Missouri Nonpoint Source Management Plan Revisions

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, reported Missouri's Nonpoint Source Management Plan is required by the EPA under Section 319 of the Clean Water Act. This plan is required as a condition of the state receiving 319 grant funding. In 1999, EPA directed the states to significantly revise their nonpoint source programs and plans. Ms. Shannon stated Missouri had begun revision prior to EPA direction and Missouri's revised plan was reviewed and approved by the commission in 2000. The plan establishes a schedule outlining which sections of the plan are reviewed and revised each year.

The Assessment section is looked at each year to reflect the most current information on activities and plans. Sources of Funding is also updated each year. The Watershed Implementation section had contained those projects funded with 319 that are watershed based. Those projects that had previously been described were left in the plan but not

reprinted for the commission. Language was added to the end and language was added regarding the SALT funding. As revisions to the plan continue over the next year, staff will be discussing how to better package this information about where the projects are located, what the projects are to make it less cumbersome for those looking at the plan.

Ms. Shannon noted staff looked at Implementation Assistance. Most of the changes in this section had to do with agency name changes. Some language was added to update information on animal waste permits and letters of approval. Information was also added on the State Revolving Fund and its relationship to nonpoint source management.

Commissioner Hegi asked if information was available on the new EPA regulations due December 15.

Ms. Shannon responded staff has some information on the watershed rule, which will be presented later but has very little information on the CAFO rule. She noted EPA Regional Administrator Gulliford spoke on this several weeks ago but he was not able to say what the content of the rule would be.

Commissioner Hegi asked how much the new rule would impact this information.

Ms. Shannon replied the plan would be revised next year to reflect any changes in our rule.

Commissioner Perry asked how the watershed rule may impact this.

Ms. Shannon responded the challenge with the watershed rule is that staff doesn't know what it will contain. Drafts of the rule have not been shared with the states. If the rule is promulgated as it has been described to staff, changes would definitely be made in the Nonpoint Source Management Plan to reflect that rule. The key to the watershed rule is the need for watershed planning which is already addressed in the Nonpoint Source Management Plan.

Commissioner Perry noted she sees where it is mentioned but she is concerned that we are not focusing on a watershed approach and she does not see anything that is leaning toward some type of prioritization.

Ms. Shannon replied this is in a separate section of the plan that was not reprinted for this meeting.

Commissioner Perry noted she does not have a copy of the entire plan.

Ms. Shannon noted she will send her a copy and the document is also located on the web site.

Commissioner Perry noted the commission took a unanimous vote two months ago that they wanted the department to seriously check into the watershed approach and planning is seriously a part of the watershed approach. She noted she does not see a process in the plan

for determining watersheds, prioritizing them and doing a better job on integrating our programs with Department of Conservation programs. Commissioner Perry stated Department of Agriculture is not even listed as one of the partners. She noted she believes we are losing track of some of the goals and focus needs to be placed on how to achieve cleaning up the environment and getting the partners to buy into the program and get something done.

Ms. Shannon replied the plan has specific goals and objectives and it does identify the Department of Agriculture as a partner. The strategies and the strategic plans from some of the partners that specifically address the needs for nonpoint source management are included. Ms. Shannon stated she agrees a better job can be done of this. The next year of review will look at the specific categorical topics describing particular types of pollutants or pollutant sources. Staff is scheduled to revise with the partners the goals and objectives the year after next.

Commissioner Perry stated she does not know how to get some bite into this. She noted what is needed is to decide on which watershed, how the monitoring will be completed, and how it will be funded. Commissioner Perry stated this is her concern and she does not see this plan getting any closer to what is needed.

Commissioner Hegi mentioned money for 30 groups with 30 different plans is a problem.

Commissioner Perry continued the groups are all going different ways in doing their plans.

Commissioner Hegi noted the short special grants are detrimental.

Commissioner Perry stated they would not be if they were coordinated. She noted what she wants to see is a coordination plan.

Commissioner Minton asked if there is any funding, other than 319, that the commission is in charge of that addresses nonpoint source.

Ms. Shannon replied the state revolving fund money which has the potential to address nonpoint source would be the only other source.

Commissioner Minton asked if the department has any plans to start addressing nonpoint source funding on a large scale. If nonpoint source is addressed through a watershed approach similar to SALT projects, it will take an enormous amount of money and monitoring above what the Soil and Water Districts Commission does. Commissioner Minton noted he sees implementation of regulation without any opportunity to assist in addressing issues.

Jim Hull, Director of Staff, noted some of the coordination does occur and they are not all headed in different directions. Some of the Farm Bill money will be used for water quality

projects. Using some of the state revolving fund money for nonpoint source is being investigated.

Commissioner Minton stated if it's just a miniscule amount of money set aside to start addressing the issue, the shortfalls and limitations of the program can be identified. If direction is not given to the department, this will continue to be put on the back burner. Commissioner Minton continued that if it can be demonstrated that money is being put to this purpose, it's a more sellable point. He noted this is the time to start the process and the state revolving fund has not been exercised yet after discussing it for several years.

Commissioner Perry stated this is why we really have to focus what plan we have into coordinating with other programs because there is no big pot. We need to show the citizens of the state that we are going to coordinate, that every dime we spend is going to be effectively used and that is not coming through in the Nonpoint Source Management Plan. Commissioner Perry asked if the \$3 million in base funds and \$2.3 million in incremental funding is per year.

Ms. Shannon replied this is what was received per year over the last few years.

Commissioner Perry noted there has been \$5.3 million available for the last few years and the Request for Proposals (RFP) for 319 this year have been sent. She asked if any guidance or planning document that we intend that these 319 monies should be targeted to coordinated watershed efforts was provided with the RFP and asked if we identified which watersheds we feel are tremendous priorities. If that was done, she asked if that shouldn't have been brought before the commission.

Ms. Shannon replied there is a criteria regarding watershed projects within the grant RFP that preference is given to projects that address issues on a watershed level. There is also a preference for projects that address waters listed on the 303(d) List for a nonpoint source reason. Ms. Shannon explained one of the challenges staff has is that EPA decides how the money will be spent. EPA has additional strings associated with the 303(d) List criteria. Some of the incremental money will likely have to be used on 303(d) listed waters that have plans because of EPA's requirements. Ms. Shannon noted staff does not specifically identify a specific watershed for each year.

Commissioner Perry asked if doing that would be more effective. A planning committee across the different agencies needs to come together to formulate a state plan. Commissioner Perry asked how to overcome all the individual groups keeping themselves busy but not quite getting somewhere.

Commissioner Greene stated there are watershed projects and thinking that all these projects are independent of each other is negative thinking. She continued that funding may go to a single source, but the whole project is within a group of others. Commissioner Greene noted there is more coordination going on than is being acknowledged. She stated coordination is really difficult to do and we need to keep working in the direction of watersheds to get there.

Commissioner Perry noted her point is that planning documents should emphasize in which direction we're trying to move. She asked if the North Fork Salt River watershed project was completed.

Ms. Shannon replied the final closeout report has not yet been submitted but it is ending.

Commissioner Perry asked if Mark Twain Lake was delisted for atrazine because of this project.

Ms. Shannon responded it was a factor.

Commissioner Perry asked if this project was instrumental in Mark Twain Lake being delisted and if the ultimate goal is to get all the waters delisted.

Ms. Shannon replied that is the goal and there were a number of projects that were in that watershed that addressed the issue of atrazine. Ms. Shannon stated for any one to take credit would be wrong.

Commissioner Perry noted when people work together and accomplish a goal, it should be recognized.

Ms. Shannon asked that the commission approve the specific changes to the specific sections of the Nonpoint Source Management Plan so that the changes can be forwarded to EPA to meet the obligations for revisions to the plan. Staff will continue to revise the plan over the next year. The next categorical subject review includes urban stormwater runoff, construction, hydrologic and habitat modification, dredging and wetlands, among others. Ms. Shannon noted it will be a very large job over the next year to review and revise these sections with the partners.

Commissioner Hegi moved **to approve the revisions to the Nonpoint Source Management plan as proposed by staff**; seconded by Commissioner Greene and passed with Commissioner Perry abstaining.

Chairman Herrmann stated this is an interim submittal that has to comply with EPA's requirements in an ongoing process.

Commissioner Hegi noted he has gone to many meetings over the last several years and everyone is involved but no one is responsible.

Commissioner Greene asked that specific changes be identified during the next revision rather than just highlighting the entire paragraph that contains a change.

State Revolving Fund Financial Update

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported that staff is required by EPA to provide an annual report on the fund and staff activities within the fund for the year. Mr. Townley stated staff is moving toward a higher degree of accountability with accounting expertise as well as a new electronic system that staff hopes to have operational by this time next year. The assets and liabilities match the activities to date.

Referring to prepared charts, Mr. Townley mentioned that in the early years of the SRF program there were some fairly wide swings in the federal funding levels from lows of approximately \$26 million to highs of over \$50 million. This has stabilized over the last few years to approximately \$34 million clean water SRF level. The state is required to provide a 20% match in order to receive federal funds so there are corresponding levels of activity here and stabilization over the last few years.

Mr. Townley reported an annual evaluation of the capitalization grant funds received as well as cumulative totals, not only for the federal funds but also for the state matching funds, shows \$497 million of federal capitalization grant funds. An almost \$99 million match to those monies has been provided through the issuance of state Water Pollution Control Bonds. Without leveraging that would have enabled staff to provide \$596 million worth of funding through the program.

Through leveraging, staff have closed \$967 million of loans to the participants. The fall closing is occurring now providing \$76,360,000 to the fall clean water participants. This closing totaled \$103,060,000 for both clean water and drinking water participants. The size of this transaction was atypical and it hit the market at a particularly volatile period. Mr. Townley informed the commission the clean water participants will enjoy a net cost of participation of less than 2% and the drinking water participants will be less than 3%.

Responding to Commissioner Hegi's question, Mr. Townley replied they are 20-year bonds and they are callable after ten years.

Mr. Townley stated adding the additional \$76 million brings about a total participation of \$1,043,000,000. A loan with Little Blue Valley Sewer District will be entered into in January for over \$89 million which will rapidly approach \$1.2 billion over the course of the twelve years.

Approximately 20 interim, interim direct and direct loans have been originated totaling around \$40 million. Mr. Townley reported most of these loans are repaid in permanent financings. These are bridge loans that allow a community to obtain construction funds to go forward with their project.

Every dollar of the 20% match provided through the state bonds and general revenue secures \$5 of federal funds. That \$6 in the clean water program generates \$8.23 worth of construction. Because of the difference in subsidy in drinking water, there will be \$8.64 worth of construction through that program. The economic benefit out of every dollar put into the program is \$9.40. Mr. Townley explained this is construction dollars and other activities directly and indirectly associated with construction. Out of every \$10,638 of state funds put into the program, one new job is generated. Since the program began, about 8,800 jobs were generated throughout the state.

Commissioner Perry noted there was at one time a question of whether priority points are given to someone applying for a SRF loan who has a water segment on the 303(d) List.

Mr. Townley responded there are indirect priority point provisions. As staff are looking at water quality impacts from the project to the receiving stream, they do take this into consideration. Mr. Townley noted financial services staff work with planning staff to look at priority point opportunities. Staff will bring before the commission proposed revisions to the regulation dealing with watershed enhancements at some point.

Chairman Herrmann noted when you consider the impacts on the receiving stream and award priority points, you are taking the community as a whole. If the project under consideration was taken out of the total community picture, you would probably get a different assessment.

Mr. Townley responded he believes the new watershed approach is going to have some significant influence on those kinds of situations. He continued you will be looking at the entire watershed and what the implications of this project as well as all of the other discharges in that watershed have on that receiving stream. Mr. Townley stated he does not know if we want to totally isolate the evaluation to just that distinct project.

Chairman Herrmann noted the effect of that project as a cumulative effect is the key.

Mr. Townley noted that is exactly correct and how this is weighed will be very key to the new system when it is developed.

Permit Efficiency Update

Phil Schroeder, Chief of the Water Pollution Control Program Permits Section, reported staff is continuing to make progress in reducing the number of expired permits and also progressing toward implementation of new permitting efficiencies that will better ensure that permits are issued more promptly and that the statutory timelines can be met for the review of those permit applications.

Only 8% of permits are currently in an expired status. Staff will continue toward bringing this down to the departmental goal of 2%. Permits are being reviewed and issued above the level needed to address the backlog.

Consultants had addressed permit reviews but staff is now trying to rely more on permitting efficiency efforts. Mr. Schroeder stated this may cause some temporary backsliding due to the difficulties this will pose for staff. Some reassignments have been made and many permit applications are now going directly to the regional offices to make the process more efficient. Mr. Schroeder noted staff anticipates they will be up to speed on their new jobs by the end of the year. An electronic permits manual that better defines the work is being developed with substantial narrative anticipated to be completed by the end of the year.

Mr. Schroeder reported staff is trying to define a better electronic data processing system. The Permit Action Management System has been restructured to define only four critical steps. Staff hopes to have some data to present by the next commission meeting.

The regional offices will be doing most of the standard permits issued to smaller, domestic sewage treatment facilities and general permits. Mr. Schroeder stated central office staff will be doing the permits that require a lot of coordination with other staff so the permits can be written more quickly.

Mr. Hull asked how Missouri compares to other states.

Mr. Schroeder replied Missouri is 4th or 5th in the nation in terms of the number of NPDES permits issued. Missouri is number one in issuing permits compared to the other states in EPA Region VII.

Commissioner Minton asked if there will be a consistency in the permit applications between regions.

Mr. Schroeder replied there is a potential for inconsistencies. In some cases consistency is very important. In others, decisions have to be made depending on a particular situation.

Commissioner Minton asked if the permit manual would help the regional offices in this effort.

Mr. Schroeder responded there is no end to what the permits manual can do. It will maintain consistency where consistency is important.

Commissioner Minton noted part of the backlog is being reduced because a permit goes back to the applicant because it was not complete, and so forth. He asked if staff is still on course with getting permits issued.

Mr. Schroeder responded the backlog is defined by an expired permit. It has nothing to do with whether or not an application went back to the applicant. If a facility has a permit that was not renewed in a timely manner, it is considered a backlog. Staff wants all facilities to have effective permits that are not expired.

Commissioner Minton asked if staff has an idea of when the timeline can be integrated into the computer system.

Mr. Schroeder replied this discussion was held years ago with the data management staff and they do understand the data that is needed in the system. He noted there is one person working on this system.

Responding to Commissioner Minton's question, Mr. Schroeder stated the refund is based on whether or not the department was able to comply with the statutory timelines.

Commissioner Minton asked if there is enough of a problem that the money that is potentially being lost could be used to hire someone in the private sector to work on this system.

Mr. Schroeder explained this database is a divisional system to serve all the programs in that division. Identifying funds for the system will not help speed the process up since other programs are involved.

Other

Terry Spence reported he has been working with some citizens around Ashley, Missouri regarding the Climax II hog rearing facility and geologic concerns. Mr. Spence noted he is concerned that there have been some deviations concerning the geologic reports. Permit number R104570 was issued February 8, 2002. A geologic report was done on October 16, 2001. Mr. Spence read several excerpts from the report and noted this needs to be reviewed.

Chairman Herrmann asked if the report being quoted from is from the geological survey office.

Mr. Spence indicated it was and he submitted the copy to the commission.

Chairman Herrmann asked if this had been submitted to the department.

Mr. Spence stated the letter that was requested went to the Northeast Regional Office.

Commissioner Perry asked if there was a high water table.

Mr. Spence replied the second geological survey that was done after the permit was issued and the place was in operation stated that the water level was baseline where the lagoon is at with the river level and with the Burlington Limestone that the water may raise up high enough to the lagoon. Mr. Spence said this needs to be revisited now since this is a fairly new operation.

Commissioner Perry asked if it is currently operational.

Mr. Spence replied it is.

Commissioner Perry asked Mr. Spence how many other hog facilities there are in that area.

Mr. Spence replied he is not sure but this is a newer operation.

Commissioner Perry noted this is a new one but there are quite a few already there that have not had any problems.

Mr. Spence replied the only reason he is connected with this one is that there is an operation going up in Montgomery County and all of these are related to the operations coming out of Pleasant, Illinois last year.

Commissioner Perry asked if the one going into Montgomery County is the same company.

Mr. Spence replied these are the same investors and shareholders. He continued there is also an operation in Platte County. Mr. Spence noted these facilities do not have a good record.

Commissioner Perry asked if this is a CAFO facility.

Mr. Spence replied it is a Class II animal feeding operation (AFO).

Commissioner Greene asked who requested the second geologic survey.

Mr. Spence replied he is not sure but he presumed it was done because of the citizen that noted geological concerns for him and the community.

Commissioner Greene asked if the regional office and central office did not have a record of this second report.

Mr. Spence replied the Northeast Regional Office copy of the file contained only the first report. He reviewed the central office files twice and there was nothing about the second report in the file. Mr. Spence said he would like to meet with staff later to discuss this.

Chairman Herrmann noted the regulations state that lagoons have to have a geologic evaluation by the geological survey staff. He noted if a copy of that information can be given to Mr. Hull that should be sufficient to initiate action.

Melody Torrey, Stream Team 714, reported she came before the commission on June 26, 2002 regarding irregularities of land application records for the PSF Whitetail site. Ms. Torrey stated she wrote a letter to the Water Pollution Control Program as the commission suggested. She continued that the questions were answered but she feels more confusion was created by the response.

Mr. Hull asked if her letter is clear on what areas she feels have not been addressed.

Ms. Torrey responded she addressed every field that is in question. She said there seems to be several irregularities in their reports and over-application will affect the water.

Commissioner Perry asked if a water analysis is done.

Ms. Torrey replied only if there was water runoff.

Closed Session

Commissioner Minton moved to **go into closed session** to discuss confidential or legal matters pursuant to section 610.021(1), RSMo; seconded by Commissioner Kelly and unanimously passed.

Commissioner Minton moved to **go back into open session**; seconded by Commissioner Greene and unanimously passed.

Ameren U.E. Bagnell Dam

Commissioner Minton moved to **refer Ameren U.E. Bagnell Dam to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Perry and unanimously passed.

Missouri's Total Maximum Daily Load Program

Sharon Clifford, Missouri's Total Maximum Daily Load (TMDL) coordinator, reported this presentation is being done in order to provide more information to the commission on the TMDL program and to satisfy a requirement of the Memorandum of Understanding between EPA and DNR that is related to the TMDL lawsuit.

Ms. Clifford stated management of water resources is changing and TMDLs are the driving force. There is a transition from a program-based looking at end of pipes to looking at watersheds. There are 174 waterbodies on the current active 303(d) List. Under current guidance and rule from EPA there are five items that have to be in a TMDL: source and the location of the sources of the pollutants, the actual mathematical calculation of the pollutant load, the assignment of allocations to point and nonpoint sources, seasonality because there are certain pollutants that react differently in winter and summer, and a margin of safety which is a recognition by everyone that this process is not a final answer process.

Ms. Clifford explained if an assessment meets standards, monitoring is continued to make sure conditions don't deteriorate. If water quality standards are not met, the water is listed on the 303(d) List and a TMDL is required. All the mechanisms available are used to implement an implementation plan and monitoring is done. If water quality standards are still not being met, you return to the TMDL. If water quality standards are met, you go into the antidegradation loop. The antidegradation standard was commented on by EPA and is being changed.

Ms. Clifford stated the lawsuits over TMDLs began in the mid 90s. EPA has now been sued by 40 states. In 1999 the Missouri Legislature provided staffing to increase monitoring capabilities and TMDLs. The 1998 303(d) List was approved and six Missouri TMDLs were approved by EPA. Ms. Clifford noted the original TMDLs versus those being produced today would show a radical difference. When the process first began, staff was told that you wrote TMDLs for a technical audience but staff learned very early that there were real people trying to read these documents and staff has changed how the TMDLs are written so they are more understandable to the general public.

The TMDL program began in 2000 within the Water Pollution Control Program. New employees were hired for the Water Pollution Control Program Planning Section and the Water Quality Monitoring Unit in the Environmental Services Program. Ms. Clifford explained the TMDL procedures had to be established in order to work with each other, other agencies, and EPA. The Policy Advisory Committee, which has been very successful, was initiated as requested by the department administration. The group is now ready to issue written policy recommendations to the department on how to proceed on TMDLs. The lawsuit settlement was negotiated in 2000 and data collection was increased. By the end of 2001, staff had 24 TMDLs approved by EPA, increased data collection was ongoing, and the national TMDL video was completed. Missouri is one of six states that sponsored this video. The Missouri segment highlighted the James River TMDL. This video is free from the department's web site because it is a layman's understanding of TMDLs. Ms. Clifford noted staff recognized many of the limitations of the department's data management systems. Data management has become a department wide priority and emphasis will be placed on the Water Pollution Control Program. The result should be much better information sharing, security on the data, and a lot of improvements for staff.

The 2002 303(d) listing process began in 2001. Ms. Clifford explained there will be a radical reduction in the number of TMDLs produced in 2002. One of the reasons for this reduction is the amount of time required to produce the 303(d) List. Both appellate courts upheld the district court decisions in both the federal and state TMDL lawsuit. The 303(d) List was submitted to EPA by the deadline and the rulemaking legislation passed on the 303(d) process. Ms. Clifford stated there are approximately five states that have rulemaking required in the TMDL listing methodology, not the list itself. Missouri is the only state required to do rulemaking on the 303(d) List. This process has been started because the new TMDL rule stating when the list will have to be submitted is not yet available. The next list is currently due in 2004.

Ms. Clifford explained regarding TMDLs completed by Missouri, there are 27 waterbody segments. The Blue River is four segments and the James River is three segments. There are 21 waterbodies but these particular stretches include more than one waterbody segment.

TMDL schedules are set based on the availability of data, priority ranking, and the schedule in the MOU with EPA and DNR used to help settle the TMDL lawsuit. The data assessment and collection unit looks at all the data, requests all the available data, and plans for future data collection. How the information will be obtained is completed. Staff mostly contracts

for data with government agencies and universities. All acceptable data is entered and downloaded into data management systems which is a very time consuming process. Information sheets are produced for every waterbody on the 303(d) List. Ms. Clifford noted this has been praised by many people in and outside of the state and is a tremendous education and outreach effort. These will all have to be revised once the new list is approved. The public participation process, which varies in the watersheds, is begun. The Modeling and GIS Unit evaluated modeling methods and determined appropriate models because these models change depending upon the impairment or the conditions in the watershed. Two model runs have to be done; one to arrive at the target and another to verify the target. Having two years of data allows staff to come up with their goals and verify it under differing weather conditions and differing situations to see if that target will still work. This unit also produces maps, graphs, tables and visual displays and assists with revising the TMDL document. Ms. Clifford noted this particular unit also does water quality review sheets and water quality standards issues lending to the workload that this staff deals with. She continued that the program has many dedicated employees who are well trained to do this job and they will be a tremendous asset to the department since they developed the program.

A TMDL is produced based on information provided by the other units and includes a history of the watershed and the problem and an implementation plan. This is submitted to EPA before it goes on public notice, which not all states do. Staff did not like the idea of public noticing a TMDL, receiving comments from EPA that radically changed that TMDL, and not giving the public an opportunity to comment on it or having to do two public notices on the same document. The process can take anywhere from one month to three years. When a document is developed that EPA feels is approvable and defensible in court, it is placed on a 30-day public notice. The only changes to a TMDL after the public notice are changes made based on public comment which generally concerns the implementation plan. The final TMDL then goes to EPA for approval.

How to track the implementation and know that goals are being achieved is the next issue facing staff. All the permits in a particular watershed have to be tracked, the appropriate limits included, and upgrades are occurring through the SRF.

Ms. Clifford reported an MOU was entered into to settle the consent decree and one of the requirements of the MOU is that an update be given to the commission and the public. Ms. Clifford reported on items included in the MOU and the outcomes.

MDNR and EPA agree to work together to produce TMDLs.

Twenty-seven waterbodies in Missouri have EPA-approved TMDLs. The list of these waters is available on the web site or by request to the department. EPA and the department have worked together extensively to complete these documents in a legally defensible manner. The working relationship has been positive and staff has gained great expertise in the production of TMDLs.

Publish the listing methodology 120 days in advance of development of the 2003 list.

The Methodology Document for the development of the 2002 303(d) list was public noticed on 3/30/2001. This was in advance of the first draft of the 2002 303(d) List which was noticed in August 2001.

MDNR shall comply with EPA timetables for submittal of the list.

The draft 2002 303(d) List was public noticed for several months starting in August 2001. Six public meetings were held throughout the state to provide citizens the opportunity to meet with staff, ask questions and provide input. New guidance from EPA regarding the 303(d) listing methodology was received November 2001, after Missouri's listing process was near completion. Subsequent to the issuance of this new guidance, the date for the submission of the 2002 303(d) List was changed from April 1 to October 1, 2002. A second public comment period ending August 2, 2002 was provided before submission of the final list to the Missouri Clean Water Commission for approval at the August 7, 2002 commission meeting. The commission approved the department's proposed list in part. The department placed all waters in 4 categories (called "parts" in the Methodology document). These categories are:

Category 1

- (a) Numeric water quality criteria for one or more discrete pollutants cause the water to be rated as "partial attainment" or "nonattainment;"
- (b) Observed water quality conditions are judged to exceed state narrative water quality criteria.

Category 2

Those waters for which no specific discrete pollutant is listed as the cause of the impairment.

Category 3

Waters for which a TMDL has been established and approved by USEPA but the water quality impairment has not yet been corrected.

Category 4

Waters which are expected to be returned to compliance with state water quality standards prior to the issuance of the next 303(d) list.

The list the commission approved did not include any waters listed in Categories 2 and 4. The 303(d) List was submitted to EPA with no final outcome at this time.

MDNR agrees to develop TMDLs.

The schedule does not list specific waterbodies; it only lists numbers of TMDLs. Staff has kept pace with the consent decree. There are very low numbers in 2001 and 2002. This was a result of the litigants recognizing there was no data to produce meaningful documents so staff was given two years to collect more information. The number jumps radically in 2003. The numbers for 2002 will be met. Ms. Clifford noted staff had hoped to exceed the numbers but that may not happen due to staff workload.

Legal counsel has agreed if any waters are delisted on the 2002 list, (there were 66 waters proposed to be delisted) they count as a completed TMDL toward this consent decree. Another factor is the MOU where specific waterbodies are detailed as to which ones need to be done in 2003. One of them is the Elk River TMDL which is 11 segments which will account for 11 TMDLs. Others that could bring about a lot of public involvement include the Jack's Fork bacteria contamination, West Fork of the Black River which is a discharge from a Doe Run mining operation, Little Sac River, Fellows and McDaniel Lakes, and Wilson and Pearson Creeks. Ms. Clifford explained that the Little Sac River was originally listed for bacteria due to a treatment plant. That listing has been proposed to be changed to bacteria due to nonpoint sources and the length of the impairment has increased. The MOU may not be met on this one since staff needs to change the approach.

MDNR agrees to monitor twenty-six waters

These were 26 waters that were proposed by the Sierra Club in the 1998 listing process. A document was drawn up as part of the MOU explaining how these would be monitored and evaluated. The department completed the monitoring on the 26 waters as specified in the MOU. EPA reviewed the data and raised some concerns about the amount of information provided and if it was sufficient to determine impairment status. Additional information has been provided to EPA and communication between EPA and the department regarding this issue is on going.

MDNR will report annually to EPA about what TMDLs are done and if water quality standards have been achieved

The number of waters achieving water quality standards are quite low because time is needed to implement these TMDLs.

MDNR agrees to review the Water Quality Standards

Ms. Clifford noted this is an important issue and the process of revising the standards has begun. EPA provided the department comments on Missouri's Water Quality Standards and the department is pursuing the changes suggested by EPA. Due to the number of issues being addressed, an agreement was reached that the process will continue for a 3-year period. The changes in Water Quality Standards included in Phase 1 will be proposed to the commission in the near future. Public meetings on anticipated rule changes were held in

2001. The department is currently investigating with EPA the potential for addressing the requirement for Whole Body Contact designation in a more flexible manner.

Missouri is the only TMDL lawsuit in the nation that involved volunteer monitoring issues. The concern of some of the litigants was the ability of the department to use volunteer data. It was agreed that volunteer data alone will never be used for decision-making.

A procedure for a higher level of quality assured volunteer monitoring was developed by June 2001. This is designated as Level 4 volunteer monitoring. Training for advanced volunteers will be provided on how to collect samples according to agency protocol and how to fill out chain-of-custody information. The current plan is to have the department's laboratory analyze the samples. The first Level 4 Workshop has not been offered to date because of staffing vacancies.

This document reflects an understanding that no one's private rights will be affected.

No concern regarding this MOU and "private rights" of individuals has been brought to the attention of the department or EPA.

The MDNR Water Pollution Control Program will provide an annual status report to the Missouri Clean Water Commission and the public.

Today's status report satisfies this condition of the MOU.

Ms. Clifford stated a question was asked earlier today about the watershed rule. This was formerly known as the July 2000 TMDL rule and was very contentious. EPA put the rule on public notice and received 30,000 comment letters. The rule was revised, listening sessions were held across the country, and conference calls have been held with states. Ms. Clifford noted EPA has been very responsive to state concerns. She reported the public comment period on this rule is anticipated in December 2002. No one in the department has seen this draft rule and they are awaiting next month's public notice.

There was a National Academy of Sciences study of TMDLs commissioned by Congress completed about a year ago. Extensive comments in support of and against the process were received. This new rule will try to address the concerns that were presented by the National Academy of Sciences. Ms. Clifford stated the goal of the rule revision is to provide states more authority and flexibility. She continued the state's goal is to get as much decision-making done at the local level as possible.

Ms. Clifford stated she believes the new TMDL rule will provide much more consistency nationally on TMDLs and she encouraged stakeholders to not only comment on the things they don't like but also on the things they like about the new rule.

The goals of the TMDL program:

Committed to a high level of stakeholder involvement. Ms. Clifford stated she believes Missouri will be way ahead of the curve because there are so many people who have already bought into this process and have gained a good understanding of how watersheds work and why these issues are important through the stream teams.

Committed to doing implementation plans based on TMDLs. This was probably the most contentious issue in the new draft rule. EPA is no longer seeking authority to approve or deny a state's implementation plan.

Be cooperative on TMDLs that cross jurisdictional boundaries. Staff is presently working with Kansas on the Spring River TMDL which involves Turkey and Center Creek in Joplin, a superfund site and a responsible party, and potential use of poultry litter to remediate lead sites. Staff has also been working with Arkansas on the Elk River TMDL. Ms. Clifford has spoken with Arkansas and Oklahoma TMDL coordinators and all are presently in agreement on how to work together.

Local decision-making particularly involving the implementation plan. Staff will make every effort to involve local people. Ms. Clifford mentioned there are strong and effective watershed partnerships existing in the James River watershed who have completed much work that she would have had to do if they did not exist. Staff received new data this week on the James River so that TMDL can be improved. This data helped NRCS in applying for a SALT grant to prove the need that exists in the Finley River for nutrient management plans. Ms. Clifford commented she has never seen better cooperation between federal and state agencies across the board. She continued that the Department of Agriculture is beginning to provide information on how the natural resources people should work with staff on TMDLs.

Commissioner Minton asked if the state will initiate its own rulemaking on TMDLs after EPA comes out with its rule.

Ms. Clifford responded that depends on the timeline in the rule. Information shared with the department is that EPA wants the process to occur every four years rather than every two years as is currently in rule.

Commissioner Minton stated the rulemaking for 303(d) List development is somewhat different than the TMDL process.

Ms. Clifford responded EPA is changing from TMDL to watershed management. TMDLs are driving watershed management.

Commissioner Minton asked if a rule will be developed for watershed management.

Ms. Clifford replied by law it has to be done on the 303(d) List at this time.

Commissioner Perry stated waters are put on the list and asked if there can still be a state plan according to watersheds.

Ms. Clifford replied she believes this is where the new rule will lead. It will be heavy on watershed management plans and less on TMDLs because that is only one part of watershed management.

Commissioner Perry asked how many watersheds there are in the state.

Ms. Clifford replied it depends on how watershed is defined. Staff often uses the hydrologic unit codes produced by USGS. The more numbers in the code, the smaller the watershed.

Commissioner Perry noted she understands there was some real effort put forth a few years ago and it got so confusing that people are having some difficulty understanding it.

Ms. Clifford responded this is pretty well established nationally by the US Geological Survey. EPA is moving toward hydrologic unit codes.

Ms. Shannon replied for an eight digit hydrologic unit there are approximately 64 in the state.

Ms. Clifford noted she believes this will be part of the TMDL rule that will help staff know how to proceed in the future.

Commissioner Perry stated she is looking for a way to explain to those who do not deal in hydrologic codes.

Ms. Clifford replied it will be based on geographic areas and it depends upon what level the watersheds are looked at.

Commissioner Perry noted also what goes into it, such as Vandalia Lake, which is high enough that nothing else runs into it. She asked if this would be its own individual watershed.

Ms. Clifford replied she did not believe it would be in the EPA reporting, evaluation and monitoring. If there was data saying that Vandalia Lake and above were impaired, that would become the TMDL watershed.

Commissioner Perry stated Vandalia Lake has nothing that feeds it and there is no land higher so there is no runoff from anything that goes into it except that which is a very small, immediate area. She asked if that wouldn't be a unique watershed.

Ms. Clifford replied she thought it would not be for watershed management planning but that's all speculation at this point.

Commissioner Perry asked if we are waiting for EPA to determine this for us.

Ms. Shannon explained every watershed is a subset of another watershed. EPA has not defined which level we need to be working on.

Commissioner Perry asked what is a manageable size watershed that watershed committees can be formed to make local decisions.

Ms. Clifford replied staff would like to do the Elk River as a unit because it's the same problem with the same inputs and issues.

Commissioner Perry asked if a plan of factors is being developed to consider.

Ms. Clifford replied she thinks the EPA rule will influence this because it will also influence the monitoring plans in the future on how ambient data is collected. She continued that she thinks the department will always have flexibility to look at these items at the level they need to be looked at. Ms. Clifford stated larger basins will be looked at for the global monitoring, reporting to EPA, and TMDL listing.

Ms. Shannon noted subsequent presentations will get into these issues.

Commissioner Perry asked if watersheds will be ranked at some point similar to impaired waters.

Ms. Shannon reported a Unified Watershed Assessment was required by EPA in 1998. The 8-digit hydrologic units were ranked in terms of priority to address the watershed. The state felt the 8-digit size of watershed was too large to use for targeting the resources. Staff asked that the Unified Watershed Assessment be revised to look at a smaller hydrologic unit, probably an 11-digit. Ms. Shannon stated that has not proceeded.

Commissioner Minton asked if the commission has seen this listing.

Ms. Shannon noted she has not brought it before the commission.

Commissioner Perry asked if this information should be used for some of the 319 grants.

Ms. Shannon replied EPA encourages this and it is discussed in the NPS management plan. Staff's concern was that this is such a large 8-digit hydrologic unit. A project within a small watershed may be the right thing to do, but it may be within a large watershed that's a very low priority.

Ms. Clifford noted in her experience the Unified Watershed Assessment is being de-emphasized by most of the agencies and the 303(d) List has risen as a priority setting document.

Commissioner Perry stated she is not advocating that all watersheds be the same size or there be any uniformity because the topography in Missouri is so dramatically different. She noted she is trying to find a way to manage.

Ms. Clifford noted the crux is going to be to give focus for our efforts but not to lose flexibility.

Commissioner Hegi asked if this will continue to be a voluntary program.

Ms. Clifford responded that what has been conveyed to staff is that it will be voluntary for nonpoint source issues.

Commissioner Minton asked if staff will have to revise some of the TMDLs that have been completed once the EPA rule comes out.

Ms. Clifford responded they are final and approved. Part of the emphasis in the new rule is phased or adaptive management TMDLs, which means an on-going process so changes that occur over time can be dealt with.

Commissioner Minton asked if staff will develop a rule for Missouri if EPA comes up with rulemaking procedures for TMDLs.

Ms. Clifford replied the state generally follows pretty closely the federally promulgated rules.

Chairman Herrmann noted Vandalia Lake is listed on the 303(d) List as being in Pike County but the USGS map shows everything in Audrain County.

Ms. Clifford replied staff has noted this and discussed with EPA.

(NOTE: Per staff review, the Water Quality Standards and 303(d) listing are correct. The Water Quality Standards document still refers to this reservoir in Pike County as Vandalia Lake and the department's Public Drinking Water Program confirms it is the one used as the city's water supply. The similarity of names Vandalia versus Vandalia Community and the more recent use of the name Steiner Reservoir for Vandalia Lake might have been confusing.)

Chairman Herrmann noted he is confused about the 31 streams listed as impaired by mercury by atmospheric deposition. He asked how a TMDL can be written for atmospheric deposition of mercury in those streams.

Ms. Clifford replied several states have tried to write mercury TMDLs. Staff is required to list these waters by EPA but they have not been scheduled to be developed at this time. Ms. Clifford noted this is a big national issue with many people working on it including the power industry.

Chairman Herrmann stated he went back through the copies of the TMDLs he has. The data in the early TMDLs went back to 1981 which says there have been no changes in these streams in 20 years.

Ms. Clifford replied everyone is trying to address these issues. For the 2002 list, generally five years of data was used and the only data older than five years was fish tissue data. Ms. Clifford noted this data is very expensive to gather and all the waters of the state can't be worked every five years. It is the opinion of most professionals that mercury levels have not gone down in the last five years and this data is legitimate to use for listing.

Cindy DiStefano, Department of Conservation, asked that the commission let her department know if there are waters that they want tested. She continued that more testing for mercury is occurring this year.

Chairman Herrmann noted he was not talking about mercury specifically but a lot of the early TMDLs were based on very old data. With the QA/QC programs, he hopes more current data will be used.

Ms. DiStefano noted if they know the waterbodies where data is needed, they can make these a priority and get more current data.

Legal Matters

CWC Appeal No. 369 PSM Farms Murphy Doylesport Pyramid

Deborah Neff, Assistant Attorney General, reported on PSM Farms' request for a Temporary Stay of Permit Conditions. The Department of Natural Resources determined they would not take a position on this request. PSM Farms indicated to go forward with these issues would cause irreparable harm, the hearing officer recommended that the commission enter the stay for a period of six months or until a hearing on the merits may occur. Ms. Neff recommended the commission adopt the report and recommendation of the hearing officer staying the permit conditions.

Chairman Herrmann asked about the implications of staying the permit conditions.

Ms. Neff replied PSM alleged that it would cause them irreparable harm and the department did not controvert that allegation. The hearing officer had little other choice than but to recommend approval of the temporary stay.

Commissioner Perry moved **to grant a temporary stay of enforcement for a period of six months or until a hearing on the merits may be had**; seconded by Commissioner Hegi and unanimously passed.

CWC Appeal No. 349 City of Milan

Ms. Neff reported that the City of Milan filed a Motion to Dismiss its appeal with prejudice. Ms. Neff recommended the commission grant the Motion to Dismiss with prejudice.

Commissioner Perry moved to **dismiss with prejudice Appeal 349 City of Milan**; seconded by Commissioner Kelly and unanimously passed.

Non-Governmental Organizations' Water Quality Initiatives in Southwest Missouri

A presentation was given by Floyd Gilzow of the Upper White River Basin Foundation and Diana Sheridan of the James River Basin Partnership.

History and Activities of the Watershed Committee of the Ozarks

A presentation was made by Loring Bullard and Mark McNay of the Watershed Committee of the Ozarks.

There being no further business to come before the commission, meeting was adjourned.

Respectfully submitted,

Jim Hull
Director of Staff